

## MEETING RECORD

**NAME OF GROUP:** PLANNING COMMISSION

**DATE, TIME AND PLACE OF MEETING:** Wednesday, April 2, 2003, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

**MEMBERS IN ATTENDANCE:** Jon Carlson, Steve Duvall, Roger Larson, Patte Newman, Greg Schwinn, Cecil Steward, Mary Bills-Strand and Tommy Taylor (Gerry Krieser and Patte Newman absent); Marvin Krout, Mike DeKalb, Brian Will, Greg Czaplewski, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

**STATED PURPOSE OF MEETING:** Regular Planning Commission Meeting

Chair Greg Schwinn called the meeting to order and requested a motion approving the minutes of the meeting held March 19, 2003. Larson moved to approve the minutes, seconded by Steward and carried 5-0: Carlson, Duvall, Schwinn, Steward and Taylor voting 'yes'; Duvall, Krieser, Newman and Bills-Strand absent.

### **CONSENT AGENDA**

### **PUBLIC HEARING AND ADMINISTRATIVE ACTION**

### **BEFORE PLANNING COMMISSION:**

April 2, 2003

Members present: Steward, Carlson, Larson, Taylor and Schwinn; Krieser, Newman, Bills-Strand and Duvall absent.

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 3392 and PRELIMINARY PLAT NO. 02028, ASPEN RIDGE 1<sup>ST</sup> ADDITION; FINAL PLAT NO. 02002, ROLLING MEADOWS 1<sup>ST</sup> ADDITION; FINAL PLAT NO. 02015, WILDERNESS RIDGE 5<sup>TH</sup> ADDITION; FINAL PLAT NO. 02033, PINE LAKE HEIGHTS SOUTH 7<sup>TH</sup> ADDITION; FINAL PLAT NO. 03001, ALLEGRINI TERRACE ADDITION; STREET AND ALLEY VACATION NO. 03004; and WAIVER NO. 03003.**

Larson moved to approve the Consent Agenda, seconded by Steward and carried 5-0: Carlson, Larson, Schwinn, Steward and Taylor voting 'yes'; Duvall, Krieser, Newman and Bills-Strand absent.

Note: This is final action on the Rolling Meadows 1<sup>st</sup> Addition Final Plat No. 02002, the Wilderness Ridge 5<sup>th</sup> Addition Final Plat No. 02015, the Pine Lake Heights South 7<sup>th</sup> Addition Final Plat No. 02033, and the Allegrini Terrace Addition Final Plat No. 03001, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

**COUNTY SPECIAL PERMIT NO. 200**  
**TO ALLOW A MOBILE HOME ON**  
**PROPERTY GENERALLY LOCATED**  
**AT NORTH 40<sup>TH</sup> STREET AND RAYMOND ROAD.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

April 2, 2003

Members present: Steward, Carlson, Bills-Strand, Larson, Taylor and Schwinn; Krieser, Newman and Duvall absent.

Staff recommendation: Conditional approval.

There were no ex parte communications disclosed.

Proponents

1. **Greg Anderson** presented the application and explained the history behind it. In July, when he checked on the regulations for a modular home in the county, he was told that he could put any type of home on the property with a septic permit because of the agricultural exemption. They found a home in August, secured a loan, and purchased the home on September 9<sup>th</sup>. They were unable to move it immediately because of the weather conditions. In the meantime, on October 8<sup>th</sup>, his wife was calling to find out about an electrical permit, at which time she was told by Building & Safety that what they were doing was illegal—having a single wide modular home on their grandmother's land—in that the agricultural exemption laws had been changed. Anderson talked with Chuck Zimmerman of the Building & Safety Department and he was told that because they had purchased the home before they changed the law on agricultural exemptions, hopefully they would be able to keep it there. The home was moved onto the site on October 13<sup>th</sup>. A week later, Anderson was told by Mike DeKalb of the Planning Department that a special permit would be needed, but because of the circumstances it would be okay to go ahead and live there while the application is in process.

Anderson further advised the Commission that the home is 1/8th mile south of Raymond Road; it is not readily visible from the road; you can see the end of it when traveling east on Raymond Road, but they have a 20' tall windbreak just north which his family planted 20 years ago.

Schwinn pointed out that the conditions of approval require that the mobile home be removed in five years. The applicant was not aware of that limitation.

Steward inquired as to the applicant's personal intentions for longer term use if there was not a five-year limitation. Anderson indicated that someday he will purchase his grandmother's home. His parents live on the northeast corner of the property; his grandmother lives more or less in the middle; and he hopes someday to purchase her home. Steward clarified that in any event, the applicant is looking at this as interim housing. The applicant concurred.

There was no testimony in opposition.

Bills-Strand inquired about the five-year limitation. Mike DeKalb of Planning staff stated that the five years was based upon the information submitted by the applicant indicating they plan to live there for five years. There is no requirement in the code for a 5-year limitation. The Commission could vote to make it effective for a longer period of time.

Anderson explained that the only reason they put in five years is because of the length of their loan. He would be happier with 7 or 8 years.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

April 2, 2003

Bills-Strand moved to approve the staff recommendation of conditional approval, with amendment to allow the mobile home for 8 years (as opposed to 5 years), seconded by Carlson and carried 6-0: Steward, Carlson, Bills-Strand, Larson, Taylor and Schwinn voting 'yes'; Krieser, Newman and Duvall absent.

**SPECIAL PERMIT NO. 384E**  
**TO CONSTRUCT AN ADDITION FOR A NEW**  
**REHABILITATION CENTER ON PROPERTY**  
**GENERALLY LOCATED AT**  
**SOUTH 47<sup>TH</sup> STREET AND RANDOLPH STREET.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

April 2, 2003

Members present: Steward, Carlson, Bills-Strand, Larson, Taylor and Schwinn; Krieser, Newman and Duvall absent.

Staff recommendation: Place on pending. Revised to conditional approval on April 2, 2003.

There were no ex parte communications disclosed.

Greg Czaplewski of Planning staff noted that the Commission should have received a copy of a revised site plan reflecting the points contained in numbers 4, 5, 6 and 7 of the Analysis regarding height of the structure. The initial application exceeded the height limitation and the applicant has revised the site plan accordingly to comply. Czaplewski also pointed out that Analysis #14 and site specific Condition #1.2 refer to a request from Parks for additional landscape information. That information has been provided and Parks has determined that there are no additional landscaping requirements at this time. Therefore, the staff recommendation has been revised to conditional approval, deleting Condition #1.2.

Proponents

1. **Matt Metcalf, Davis Design**, the architect for the project, and **Joe Hakenkamp, Health Director for Tabitha**, appeared to answer any questions. The applicant agreed with all conditions of approval.

There was no testimony in opposition.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

April 2, 2003

Steward moved to approve, with conditions, deleting Condition #1.2, seconded by Taylor and carried 6-0: Steward, Carlson, Bills-Strand, Larson, Taylor and Schwinn voting 'yes'; Krieser, Newman and Duvall absent.

Note: This is final action, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

**COMPREHENSIVE PLAN CONFORMANCE NO. 03004  
TO REVIEW THE PROPOSED DECLARATION OF SURPLUS  
PROPERTY GENERALLY LOCATED AT W. KATLEMAN DRIVE  
AND N.W. FAIRWAY DRIVE, AS TO CONFORMANCE WITH THE  
COMPREHENSIVE PLAN.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

April 2, 2003

Members present: Steward, Carlson, Bills-Strand, Larson, Taylor and Schwinn; Krieser, Newman and Duvall absent.

Staff recommendation: A finding of conformance with the Comprehensive Plan.

There were no ex parte communications disclosed.

The Parks Department did not appear.

**Support**

**1. Tom Reisher**, 5438 N.W. Fairway Drive, one of the adjoining properties, testified in support on behalf of the nine adjoining property owners.

Steward asked Reisher to give the Commission some insight as to how this communication initially transpired initially with the Parks Department. Reisher indicated that it actually began with another portion of the Highlands South Park along the northern and western edges. There was a similar surplus around those properties due to encroachments that, over the last 20 years, had grown out of the lack of development of the park area. Rather than try to clean all of that up and move out railroad ties, etc., Parks agreed to surplus the 10-20-30 ft. stretch along the border of the park and make that available for purchase by the adjoining homeowners. At that time, Reisher and his neighbors had all been under the impression that Outlot A had been swapped between the developer and the Parks Department a few years ago and that this property had been included in that original transaction, but it was not.

Carlson observed that it looks like the part being surplus is about 1/3 acre out of about 34 acres of park land. Reisher concurred that it is a very small portion of the Highland South Park.

There was no testimony in opposition.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

April 2, 2003

Larson moved a finding of conformance, seconded by Taylor

Schwinn noted that this has been going on the entire six years that he has been on the Commission and he is glad to see the end of it .

Motion to find the proposed declaration of surplus property to be in conformance with the Comprehensive Plan carried 6-0: Steward, Carlson, Bills-Strand, Larson, Taylor and Schwinn voting 'yes'; Krieser, Newman and Duvall absent.

**WAIVER NO. 03002**  
**TO WAIVE THE REQUIREMENT FOR A**  
**PEDESTRIAN EASEMENT AND SIDEWALK**  
**ON PROPERTY GENERALLY LOCATED**  
**AT SOUTH 40<sup>TH</sup> STREET AND**  
**PINE LAKE ROAD.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

April 2, 2003

Members present: Steward, Carlson, Bills-Strand, Larson, Taylor, Duvall and Schwinn; Krieser and Newman absent.

Staff recommendation: Denial.

There were no ex parte communications disclosed.

Support

**1. Michael Patterson**, 3821 Old Dominion Court, testified in support. He has lived in Lincoln 5 years. He purchased his lot in 1998 and the house was built in 1999. The plat for this neighborhood was designed in 1995. There have been a tremendous number of changes during this time. For example, there is a retirement center directly behind his home which was originally platted to be townhomes; South Pointe has been developed; there is a new access underneath Pine Lake Road, etc. In approximately one-half of the circumference of the path there are 8 entry points to access the path (approximately one entry point for every 1/10th of a mile). The people who would access the sidewalk in question the most would be the residents on their cul-de-sac.

Patterson submitted a petition of the neighbors, all being aware of the intent to waive the pedestrian easement/sidewalk, and all of them have signed saying they would oppose the construction of a sidewalk. Given the many changes over 8 years, they would like to see more trees and grass. The members of the cul-de-sac have to walk approximately 1/10th of a mile to the first access point on 38<sup>th</sup> Street. To access another point on Williamsburg Drive, they have to walk approximately .14 mile. He does not believe this is disagreeable. He disagrees with the staff analysis that the sidewalk would be used if it were built. Originally, the sidewalk was to be built based on a sidewalk access from 40<sup>th</sup> Street that would connect from 40<sup>th</sup> to the path on Williamsburg Drive. Since that time, there is a retirement center behind their homes instead of townhomes.

In addition, Patterson submitted that the terrain is probably unforgiving in allowing a path to be completed. The Planning Department even acknowledged that this would be difficult. The developer has no intention of building a sidewalk on 40<sup>th</sup> Street to connect to the path. It is a steep drop-off and there is a flow liner so it would be very difficult to construct a sidewalk.

Steward inquired whether Patterson was aware of the easement when he purchased the property. Patterson indicated that he was not made aware of that but he takes responsibility as “buyer beware”. However, it was supposed to have been constructed in 1995, and he purchased his lot in 1998.

Carlson asked Patterson how the residents will get service to the trail. Patterson stated that Blue Ridge Lane to 38<sup>th</sup> is just 1/10th of a mile. Then from his house to Williamsburg Drive it is .14 mile. Carlson believes that the trail easement from Old Dominion Court to the trail would be 150'. The sidewalk on the south edge of Blue Ridge Lane does not show on the aerial but Greg Czaplewski of Planning clarified that there is a sidewalk there now.

Steward asked Patterson to clarify his comments about the difficulty in building the sidewalk. Patterson's information is based on two conversations that his wife had with the Planning Dept. and with the developer. It appears that the rationale for the sidewalk on this easement was that there would be a sidewalk on 40<sup>th</sup> Street that would connect to the path and it is that sidewalk that would be difficult to build because of the terrain, etc.

**2. Colleen Jones**, 3820 Old Dominion Court, testified in support of the waiver. The sidewalk would be between their her property and the Patterson property. All of the homeowners on the cul-de-sac have access to the path from their own property by walking on their own grass. She does not believe the sidewalk is necessary. She was not aware of this public easement when she purchased her home either.

There was no testimony in opposition.

Larson asked staff to explain the recommendation of denial. Greg Czaplewski of Planning staff stated that this easement was required pursuant to the subdivision ordinance because of excessive block length. It was required to provide access from Old Dominion to South 40<sup>th</sup>. The easement, while it does tie to the trail, also attaches to another easement over this outlot that eventually connects to South 40<sup>th</sup> Street.

Schwinn pointed out that there is no sidewalk to South 40<sup>th</sup> Street. Czaplewski agreed, but there is an easement that exists and the developer has the obligation to put it in. It should have been done when the adjacent streets were constructed.

Carlson believes this is a link in the system that gets you from Old Dominion Court to 40<sup>th</sup> Street.

It appears to Larson that the sidewalk would only service the people in the cul-de-sac. Czaplewski believes it would provide any residents in the area with access to South 40<sup>th</sup> Street. Larson noted that the sidewalk does not extend to the street on the west. Czaplewski pointed out that part of the neighborhood trail connects to South 38<sup>th</sup> Street.

Steward is concerned because he believes there are two issues: 1) the easement, which was previously approved, and 2) the reticence of the developer to put the required sidewalks in. If they had been constructed in a timely fashion, this question would not be before the Commission, and the property owners would have had the sidewalks on the property when they made the decision to purchase. Czaplewski advised that the developer has indicated they would be paving the easement and that is what has precipitated this waiver request.

Bills-Strand noted that there is a huge terrain issue at Savannah Pines. At the intersection of 40<sup>th</sup> and Pine Lake Road on the northwest corner, it is really high in one part and then drops down a lot lower in the other part. How will you construct this sidewalk? Czaplewski suggested that the easement was granted, so he assumes the developer had some provision in mind to provide the sidewalk. Bills-Strand believes it is a four to six foot drop. Ray Hill of Planning staff suggested that if the Planning Commission would desire to hold this over, the staff could do some research and investigation on the issue. Schwinn believes this would be beneficial because we are looking at dated photographs, etc. Czaplewski confirmed that there is a sidewalk on 40<sup>th</sup> Street.

#### **Response by the Applicant**

Patterson does not believe Hampton Development is aware of any obligation that the developer may have to provide that sidewalk. Hampton also told his wife that it would be very difficult to build the sidewalk because of the terrain. Patterson sees no basis for putting the sidewalk on the easement on his property, especially if the abutting owners are willing to walk through their yards to get to the path.

Schwinn pointed out that page 118 of the agenda shows the easement which is a requirement of the developer.

Steward moved to defer for two weeks, with continued public hearing and administrative action on April 16, 2003, seconded by Bills-Strand and carried 7-0: Steward, Carlson, Bills-Strand, Larson, Duvall, Taylor and Schwinn voting 'yes'; Krieser and Newman absent.



**STREET VACATION NO. 03003**  
**TO VACATE X STREET FROM THE WEST LINE OF**  
**NORTH 10<sup>TH</sup> STREET TO THE WEST LINE OF**  
**NORTH 11<sup>TH</sup> STREET.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

April 2, 2003

Members present: Steward, Carlson, Bills-Strand, Larson, Taylor, Duvall and Schwinn; Krieser and Newman absent.

Staff recommendation: Vacating X Street between the east line of 10<sup>th</sup> Street and the west line of 11<sup>th</sup> Street conforms with the Comprehensive Plan; vacating X Street between the east and west lines of 10<sup>th</sup> Street does not conform with the Comprehensive Plan.

Ex parte communications: Bills-Strand reported that she did receive a voice mail in opposition but she did not know who it was from. Taylor believes he had the same call.

The Clerk announced that the Commission has received a written request from Capitol Contractors for a two-week deferral.

Carlson moved deferral, with continued public hearing and administrative action scheduled for April 16, 2003, seconded by Bills-Strand and carried 7-0: Steward, Carlson, Bills-Strand, Larson, Duvall, Taylor and Schwinn voting 'yes'; Krieser and Newman absent.

There was no testimony in opposition.

**COUNTY CHANGE OF ZONE NO. 211**  
**FROM AG AGRICULTURAL TO AGR AGRICULTURAL RESIDENTIAL**  
**and**  
**COUNTY PRELIMINARY PLAT NO. 02029,**  
**THE PRESERVE AT CROSS CREEK,**  
**ON PROPERTY GENERALLY LOCATED**  
**AT SOUTH 68<sup>TH</sup> STREET AND ROCA ROAD.**  
**CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:**

April 2, 2003

Members present: Steward, Carlson, Bills-Strand, Larson, Taylor, Duvall and Schwinn; Krieser and Newman absent.

Staff recommendation: Deferral until completion of the rural/acreage studies called for in the Comprehensive Plan.

There were no ex parte communications disclosed.

Mike DeKalb of Planning staff submitted two letters in opposition with concerns about this project coming forward again prior to completion of the rural/acreage studies. Nothing has changed since the Commission made that decision in February.

### Proponents

**1. Brian Carstens** appeared on behalf of the owners and developer. This application was previously placed on pending until the point system and acreage study come forward. In the meantime, the applicant forwarded a letter from the City of Hickman with no objection because this property is outside of their 1-mile jurisdiction and mostly outside of their 2-mile horizon plan. The applicant felt it was worth looking at this item again. Carstens reiterated that this property is outside any future service limits and outside of all of the tiers. It would be many, many years before it would ever be sewerable. The proposal preserves the trees in the open space and floodplains. All building envelopes are at the edge of the floodplain. There will be no development in the floodplain except the two roadway crossings. Within 1/4 mile to the south of this property, there are eight acreages along Roca Road and a quarter section that has been zoned and subdivided AGR. Carstens submitted that this will be a sweet spot for acreages when that point system comes forward. The roads are paved and will be improved next year. The developer hopes to begin the development this summer and fall; however, they do not plan to occupy all 15 lots at this time.

Schwinn suggested to the applicant that this application may end up being deferred because there are only seven Planning Commission members present and there may not be enough votes one way or the other to move it forward. Schwinn asked Carstens whether he would rather have a recommendation of denial to the County Board or a vote to defer for two weeks. Carstens indicated he would rather have a deferral.

### Opposition

**1. Bruce Kuster**, a neighboring property owner, testified in opposition. He does not see why this should be brought back for hearing when the decision was already made in February for deferral. The letter from Hickman has no bearing on the case because the property is not within that jurisdiction. When he read the analysis in the staff report, it notes that the floodplain is not quite as large as what FEMA has shown. He disagrees when the developer says they will not destroy this land. If you walk on the property you will see that there is no way it would not be destroyed. Building on it will destroy it. The majority is native grasslands and there are a lot of native trees. He questions how the culverts across the floodplain would never flood. The fence in the back of this property has been washed out several times over the years just with large rains. This is very low land. He showed photographs of the slough grass which is evidence of a wetland. We are in a drought and you would not see water there now, but a few years prior to 1997, farmers could not even farm the southwest corner because the only way to get to it was to cross the wetlands, and it was so wet that they could not get across it. He

urged the Commissioners to go walk the property. It is probably the only thing like it in that part of the county. A lot of this ground has never been plowed. Kuster requested that the Commission again defer this application until the point system comes forward.

Kuster confirmed that he farms the property to the north. The subject land was owned by his great grandparents previously; however, he has never owned this property. It was put up for sale by the heirs, not the people who owned the land. Kuster only had one day to offer to purchase the property.

There was no rebuttal by the applicant.

Duvall moved to defer, with continued public hearing and action on April 16, 2003, seconded by Taylor.

Steward will vote against this motion on the basis of objecting to deferral of a potential vote in anticipation of a vote of those who are not here. He believes that is out of order. The Commission has already taken action on this proposal and he believes they should stick by the action that has been taken. He agrees that the Hickman letter was not a good purpose to reopen this question. He believes it was inappropriate to bring this back up for hearing prior to completion of the rural/acreage studies.

Schwinn pointed out that the applicant requested that this be brought forward again. Rick Peo of the City Law Department stated that it is the role and function of the Planning Commission to give a recommendation to the governing bodies. It is not the function of the Planning Commission to hold an applicant hostage by putting things on pending for an unreasonable length of time. The better solution is that it either goes forward with denial or approval. Some ordinances allow the applicant to go to Council and ask the Commission to take action. He would normally recommend that applications not be put on pending for any length of time without the consent or approval of the applicant.

Steward believes there is a question about the definition of "unreasonable". We have the situation where we have a date specific study that impacts these sorts of decisions and he does not believe it is unreasonable to defer action in the face of that impending study. Or, Peo suggested a recommendation of denial in the sense that the applicant is not in conformance at this time and that the application cannot be evaluated until after that study. He also acknowledged that the applicant does suffer a lengthy wait before they can reapply if the application is denied.

Motion to defer for two weeks, with continued public hearing and administrative action on April 16, 2003, carried 5-2: Bills-Strand, Larson, Duvall, Taylor and Schwinn voting 'yes'; Carlson and Steward voting 'no'; Krieser and Newman absent.

**SPECIAL PERMIT NO. 1998**  
**FOR A RECREATIONAL FACILITY**  
**(NEBRASKA TENNIS CENTER)**  
**ON PROPERTY GENERALLY LOCATED**  
**AT SOUTH 84<sup>TH</sup> STREET AND SOUTH STREET.**

**REOPENED PUBLIC HEARING BEFORE PLANNING COMMISSION:** April 2, 2003

Members present: Steward, Carlson, Bills-Strand, Larson, Taylor, Duvall and Schwinn; Krieser and Newman absent.

Staff recommendation: Denial.

Ex parte communications: Bills-Strand stated that she received a telephone call from Mike Marsh this week. Schwinn noted two editorials in the newspaper.

Brian Will of Planning staff submitted additional information for the record, including a letter in opposition to any tennis court lighting; another letter in opposition with concerns about the lagoon and sewer system, potential odors and safety of the neighbors; and two letters from the same party in opposition based upon non-compliance with the Comprehensive Plan.

Proponents

1. **J.D. Burt of Design Associates**, 1609 N Street, testified on behalf of the applicant and addressed the issues and highlights in some of the letters received. With regard to the reference to non-compliance with the Comprehensive Plan, Burt advised that before they started on this project, they looked at the Comprehensive Plan and found this area was currently zoned AG and identified in the Comprehensive Plan as future urban residential. They then looked at the zoning ordinance and found that recreational facilities are not only allowed in the existing AG zoning, but also allowed with any assumed residential zoning that the city might move forward with at some point in time.

As far as the reference to precedence for non-residential or commercial uses up and down 84<sup>th</sup> Street, Burt suggested that some people do not want South 84<sup>th</sup> to turn into North 84<sup>th</sup>. He also noted the numerous churches, day cares, parochial schools, and office complexes (such as at 84<sup>th</sup> & Van Dorn which was annexed with the condition that they be allowed to tie into city sewer). This developer has not asked for annexation and city services because they were told that they did not qualify for a lift station.

With regard to the traffic issues, there is a four-lane roadway from north to south. There has already been construction or plans in process to complete a four-lane cross-section, at a minimum, for 84<sup>th</sup> Street. This is a use that is very complementary with the zoning. When the roads are designed consideration should be given to vehicle trips associated with

development on both sides of 84<sup>th</sup> over the lifetime of the paving. Typically the roads are designed for 20 years, and at some point in the next 20 years Burt believes there will be urbanization on the east side of 84<sup>th</sup> Street.

Burt further pointed out that if they changed the zoning to R-3 with loss of adequate right-of-way, it would more than double the number of trips that would be generated by the tennis facility. Traffic is not a concern.

With regard to lighting, Burt explained that these structures are not like those at Woods Park. The structures are opaque. The rest of the lighting would be designed in compliance with parking lot design standards and lighting standards for recreational facilities. They have also agreed to turn off the lights at 10 p.m. to 6 a.m.

Regarding the concerns about the lagoon, Burt noted that the 1/4 mile spacing needed for a lagoon and the nearest residence is a requirement of lagoon systems allowed by the State. This is not that type of facility which you find adjacent to feedlots, etc.

With regard to drainage, the developer has revised and prepared the grading plan that would take the majority of the runoff from this site and put it into the drainageway south of their proposed driveway. Anything south of the driveway is a drainageway and detention cell.

Burt requested that the Commission approve the waiver of the 100' setback adjacent to the building to 60'. The property owner to the east that would be affected has indicated that they are not willing to part with any of their real estate and do not oppose the waiver of setback to 60'. The applicant has initiated conversation with LPS which owns 20 acres on the south, but they do not know how that conversation is going to progress. The applicant does not want to be presumptive about their decision, and would request that the proposal move forward with the 60' setback with the understanding that they would continue to negotiate additional courts located on LPS property and hopefully end up with a joint venture with LPS.

Carlson noted that one of the issues is the building height. What do we suppose the opinions are of the future homeowners that will live on the residential property? Burt suggested that when the residential property gets developed, the recreational facility will have been there a period of time and those buildings would be part of the existing landscape so the future property owners will know it is there. With regard to the size, Burt pointed out that there will be minimal tree removal for the driveway. The only trees being removed are those necessary to provide the culvert.

The applicant did offer to meet with the 5 property owners in Pinedale Heights and only one individual attended, and it was a case of "not in my back yard".

Burt also pointed out that with the existing zoning, there are certainly other types of uses that are permitted today that are not being utilized such as livestock, etc.

Taylor inquired whether the building would be located in the lower area of the site. Burt explained that they are cutting the top of the hill down by 13-14 feet and using that material to provide a level platform for the whole building. The lower area will stay intact.

Steward noted that the conceptual building elevations are showing a dome-like structure – an air pneumatic structure. Can you imagine any type of structure that is less compatible with a residential neighborhood than a white pneumatic structure?

**2. Dave Northey**, President of **Nebraska Tennis Center**, 2033 Manatt Court, testified in support. This is a facility that is to become a World class facility, not only to help the region of this area but the whole Missouri Valley. Lincoln does not have enough courts for the kids to practice at this time. He wants to keep the kids local and this will help the University because currently almost everyone on the tennis team is foreign. He would like to see some of the local people be able to be given this chance.

Currently, when they have tournaments for the high schools, the Lincoln students require five vans to travel to Fremont to hold a tournament. This facility would allow the junior varsity and varsity teams to hold their meets at the same time. This will allow the Class A and Class B tournaments to be held in Lincoln as opposed to Omaha. In order to have any kind of sanctioned regional tournament, we simply need more courts.

Northey stated that one of the main goals is to make this a family-oriented facility. There will be a complete fitness center, dining, child learning center, etc.

Steward commended Northey for his values and planning and desire to provide this kind of facility in the community. His concern is purely the location. What process did you go through to select this site? Northey indicated that this is the fourth site they investigated. This search has been going on for almost two years. They have returned to this site because it is the only one available that will work. He believes it ties in good with the land uses. Steward suggested that as long as the facility is not hooking into city utilities, it could be placed anywhere, even 10 miles outside the city limits. Northey's response was that a part of the income is membership – if the facility is located 10 miles out of town, it will adversely affect the membership. He believes this is a very good location.

Carlson appreciates the goals and the need in the community. In addition to the comments of Commissioner Steward, Carlson referred to the staff report which states that, "Recreational facilities can be appropriate in or near residential neighborhoods when designed to integrate into the area. ....It must be set back further from property lines, be substantially screened, and the grading plan revised to be compatible." Carlson asked the applicant whether there is no way to accomplish that compatibility. Burt suggested that there are also business concerns

that come into play. When you start looking at a project like this, there has to be a revenue stream for the project to be feasible. With the LES easement traveling across this property, it did a real good job of tying their hands with designing anything that would fit the standards. The applicant believes they have made a decent attempt to meet the requirements. When you look at the zoning requirements for AG, it talks about a 60' sideyard (which this project has) and a 100' rear yard (which this projects seeks to waive to 60'). The applicant has a letter from the property owner who does not oppose this waiver. The applicant has requested a height waiver, but there is a question as to whether the waiver is even necessary based upon how the height is measured. If this were a traditional building with ridge and rafters, this waiver would not be needed. They could have gone in and completely graded the site and located the building closer to 84<sup>th</sup> Street, but the applicant thought it would be better to locate the building further away from 84<sup>th</sup> Street. They have located the building as far away from the existing residential properties as possible. They will work with Public Works to achieve an acceptable grading plan.

**3. Mike Marsh**, 3740 Williamsburg Drive, submitted an article which appeared in the Lincoln Journal Star, which is a great summarization and spells out the points in support of this project very well. Marsh is the owner of the property under contract to sell to Nebraska Tennis Center, and President of the Husker Netters at UNL. The best comparison as far as comparability is Happy Hollow in Omaha, which is in a very upscale neighborhood. As far as the need for this facility, the newspaper article points out that the University of Nebraska does not have a NCAA-standard facility for meets. There are teams in the Big 12 that will not come to Lincoln for a dual meet. That does not help our program. We appreciate what Woods has offered, but it is of the worst in the Big 12. This project is going to be something that will bring significant dollars into this community. No taxpayer money is going to subsidize this program. This property is ideal. It is a very difficult property with the LES easement, but it fits in well for this use. This will make this property into a park like setting. This is not going to be an ugly facility. It will be well-landscaped and will be an attractive center. Voting for this project is a vote for the youth and this community. "The ball is in your court."

Steward asked Marsh whether he was involved in the property search other than this site. Marsh has been aware of each and every site that has been considered. They started with this site. They have been distracted to other sites and are now coming back after two years because this is the best site.

**4. Ken Tharp**, 6355 Perry Circle, testified in support. His interest is mostly related to his general interest as a 52-year tennis player and as a high school tennis team coach. Tennis is a sport that has tremendous potential to strengthen the overall health of the people who play the game. It is an activity that anyone can take up at almost any age and is almost the healthiest that there is. He believes the sport has the potential of growing if we can give it

some support with a facility such as this. As a coach, he knows that the high school has problems getting good practice facilities. They are forced to practice in shifts. It is difficult to find an alternate place to hold a dual meet between two high school teams if it is raining.

**5. Bill North** testified in support. He plays tournament tennis, played for the University and was a tennis coach at East High. He suggested that the Commission think about this project as being the “goose that lays the golden egg”. We know that this is a multi-million dollar project and there are many people that work in the construction trades throughout our city. We would be creating tremendous employment in the construction trades and their suppliers. We would also be creating jobs for the staff that will be running the facility. Let’s also think of geese (tennis enthusiasts) that are out there beyond Lincoln. Let’s bring them into Lincoln. We have the University that wants to expand and bring in real tournaments and great players into our City. LPS needs this for five high schools, and the surrounding area high schools need a big facility. The Lincoln Tennis Association sponsors tournaments and they want to bring people in from outside areas for tennis tournaments and other special events. “Let’s draw those geese in and let’s house them at the goose house.” And in the process all of those geese will be coming in with a billfold and will spent a lot of money here.

Another way we create the golden egg is through taxation. We expand our recreational facilities here in the City and they hand us money for it in the form of taxes. They pay us to expand our recreational facilities.

How about retention of people in the City of Lincoln? The snowbirds are constantly going to South Padre, Hilton Head, and San Diego, and they spend their money there. We want them spending their money in Lincoln. Lots of the snowbirds move permanently and take their money with them. We would have a first class facility drawing world class players and Mr. Northey will develop a junior academy to bring young people in.

### Opposition

**1. Dennis Holman**, 8400 Norval Road, 2 blocks north of the proposed development, agreed with all of the comments about the contributions that this facility could make to Lincoln, its youth, the economy, etc. His only objection is from the standpoint of traffic flow. 84<sup>th</sup> Street was recently reconstructed to be a 5-lane street – two lanes north, two south (at least from South to O Street), and they have added a left hand turning lane in the center. That turn lane ceases at South Street. At the entrance to the tennis facility, the island is to allow left turns onto South Street from the northbound traffic off 84<sup>th</sup>. Anyone exiting the facility that wants to go south has to cross three lanes of traffic at 40 to 45 mph. Trying to exit his driveway on Norval Road, he spends 3-4 minutes waiting to make a left hand turn. He envisions some very serious traffic fatalities at this location. Possibly there needs to be some traffic lights at that intersection.



As an alternate proposal, he suggested moving the whole facility further south, abutting Van Dorn, facing the south on Van Dorn, with exit on Van Dorn, then to 84<sup>th</sup> with the traffic light. He believes this would solve the traffic problem. There is far less traffic on Van Dorn than 84<sup>th</sup>.

**2. Pam Schumacher**, 8420 Norval Road, testified in opposition. She believes that she represents a lot of neighbors. She has sent letters to 26 neighborhood families and she has only received one letter in support. She knows there is opposition in the neighborhood. Some people are in occupations where they cannot come forward and oppose this application. They are concerned about the lagoons. There will be a stench two times a year, along with mosquitoes. They are concerned about the closeness to the neighbors on Pinedale. This facility is too close to the residential neighborhood. The Comprehensive Plan states that land within this area should remain generally in its present use. Without the sewer, the land needs to stay as is until the sewer from the north can reach the south. It is too soon at this stage of the game.

Carlson noted that the staff report sets forth potential conditions of approval, but the staff is recommending denial based on the inability to get sufficient mitigation in terms of setback, screening and grading plan. Brian Will of Planning staff advised that the staff report is a review based on what was submitted. Paragraph B on page 5 of the staff report discusses the major concerns of the staff. Based on these concerns the recommendation is for denial, but should the Planning Commission wish to approve the special permit, the staff wanted to include conditions. The largest issue is the scale and scope of the building in proximity to the adjacent properties. Based on current information, the Comprehensive Plan shows residential and we have to assume there will be residential uses surrounding this property. This use may be appropriate under certain circumstances. However, we are seeing a 52' tall building within 60' of the property line. The staff does not take issue with anything that has been said about the need for this facility, but the scope and size at this location are not compatible.

Bills-Strand recalled having this discussion during the Comprehensive Plan process, and at that time she believes the Commission liked the thought, but wasn't willing to make a decision at that time. Regardless of what happens, Bills-Strand believes the Commission needs to make a decision in one form or another. There is a dome church just down the street. There are shopping centers on 27<sup>th</sup> and Pine Lake Road with a nearby junior high with the same traffic issues. How long and how many times has this developer come forward? (Bills-Strand referred to the letter from Jason Reynolds of the Planning Department to J.D. Burt dated July 15, 2002). Carlson believes they came forward with a comprehensive plan amendment to change from agricultural but they were informed that a recreational facility could be requested by special permit in the AG zoning. Will believes that the staff saw an initial concept plan for this facility at this site and may have indicated that in some ways it looked like it may be acceptable; however, when the application was submitted for the special permit, what the staff saw versus what was originally discussed in general terms was a larger scale and scope than

anticipated – adjacent to the property line, closer to the property line, etc. Discussions prior to an actual submittal are often times based on conceptual drawings subject to change.

Bills-Strand inquired as to the staff recommended requirements on the north side. Will clarified that there are no waivers being requested on the north side. The only setback requirement is on the east or the south. If they were to move this facility further into the site away from the southeast property line, then they would not need the waiver of the setback but they would still need the height waiver.

Taylor stated that he really likes the project and believes it is something that Lincoln really needs. Have there been any projects similar to this that the staff has taken exception to and has not denied in the past? Have exceptions been granted in other situations with similar circumstances? He finds two things happening here - there is seemingly a lack of compromise on both sides. The developers cannot reduce the scale and the staff has set such guidelines that it is impossible for any adjustments to be made. Ray Hill of Planning staff did not believe there have been any exceptions. Usually facilities of this size have been located in industrial or commercial areas, which allow the larger size buildings, as opposed to being located in a residential area.

#### Response by the Applicant

Burt reminded the Commission that this property is zoned AG. This is not a request to change the zoning. He referred to the zoning ordinance for AG through R-3 -- the existing AG zoning requires a 60' side yard (which this project has on the south side), and a 100' rear yard (for which this project has requested a waiver with the consent of the adjacent property owner). AGR zoning would reduce the side yard to 15' and the rear yard to 20'. If this project were in a different zoning district, the staff comments would likely be different.

Burt then referred to excerpts from the letter authored by Jason Reynolds of the Planning Department dated July 15, 2002. That letter was in response to a meeting this applicant had with the Mayor and staff on July 9, 2002. That letter discusses the issues at this site and states that water and sewer are acceptable to the Health Department, and that no city services will be provided unless the site is annexed. Burt advised that the applicant then did make a request for annexation because that's what the staff indicated would need to be done. Upon review by Public Works and others not in tune with the first conversation between the applicant and staff, the annexation request was withdrawn. This project would love to have utilities and this applicant did ask to be annexed and this applicant offered to negotiate an easement with LPS to provide a lift station in Van Dorn. The site has been designed in accordance with that letter from the Planning Department dated July 15, 2002. Burt confirmed that this application complies with the parking requirements and they have agreed to some lighting restrictions. Everything is located as far away from the existing residences as possible.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

April 2, 2003

Steward moved to deny, seconded by Carlson.

Steward believes this is poor planning for a great idea. It's the wrong site. On one hand, we are told that it is exactly the right site. On the other hand, we are told that the site has problems and it is the way it is because it has to be that way, and it is because that is the way the site is arranged and configured. Steward believes it is out of scale and out of place. The AG zoning is the way it is because the Comprehensive Plan and the Public Works improvements have not caught up with the urbanization of this area for the Stevens Creek Watershed. And yet if the owners or developers are willing to go to the expense to put their own utilities in, it suggests to Steward that the whole County is the framework—not just 84<sup>th</sup> Street. You cannot compare what this white pneumatic structure on the landscape is going to look like along with anything else that exists on that street. It won't be comparable. It won't look the same. It won't look compatible. It doesn't function from a utility perspective and point of view. Yet he wishes we had the facility in place right now, somewhere in this city. He appreciates the sport. If it's this valuable and this needed and this much of an investment, then he believes there is time to put it in a more appropriate location according to the planning of the community.

Carlson commented that he appreciates the fact that there is a need and the fact that this developer is trying to come up with a nice facility; and he appreciates all the comments about the economic drive, the student drive and the tournament drive. He believes those are good comments and comments particularly appropriate for the City Council. As a Planning Commissioner, Carlson questions whether this is good planning and he agrees with Steward's comments. The setback is a concern. He believes R-3 would require waiver requests as well. On this site with this site plan, Carlson does not believe this is good planning right now.

Bills-Strand stated that she is in favor of the facility, but if this was in her backyard she would be struggling with it. She is not struggling with the concept but with the location. If we are truly going to have a lot of people coming in, it would be nice if it were located closer to hotels.

Schwinn commented that the Commission has certainly received a lot of good thoughtful letters, but sometimes those good thoughtful letters in opposition can change what you are thinking about the whole subject or reinforce it. The traffic issue is interesting. He spent some time at the Lincoln Racquet Club and watched what occurred there. Old Cheney is a far more intense use than 84<sup>th</sup> and there is nothing but a stop sign, yet there are no traffic problems moving in and out of there. Schwinn noted that there is a city water tower across the street. In terms of parks being acceptable or this type of sports facility, he thinks back to the years previous when his son played baseball at Cooper Park. It is ringed on three sides by houses that face the park. It is approximately ½ the size of this location with Parks School right next to it. All of the neighbors came out to watch us play. With regard to the concern about the

lagoons, Schwinn pointed out that lagoons were sited at Spirit Park to the north, also in Stevens Creek. There was far more opposition at that time and he has not had a neighbor come forward with concerns since then. While we are all concerned about change in our neighborhood, Schwinn believes this is going to be a good change and he will support it.

Motion to deny failed 3-4: Steward, Carlson and Taylor voting 'yes'; Bills-Strand, Larson, Duvall and Schwinn voting 'no'; Krieser and Newman absent.

Larson moved approval, with conditions, with the amendments as requested by the applicant, seconded by Duvall. Motion failed 4-3: Bills-Strand, Larson, Duvall and Schwinn voting 'yes'; Steward, Carlson and Taylor voting 'no'; Krieser and Newman absent.

This application was held over for administrative action on April 16, 2003.

**COUNTY SPECIAL PERMIT NO. 198**

**and**

**COUNTY PRELIMINARY PLAT NO. 03000,**

**WYNDAM PLACE,**

**ON PROPERTY GENERALLY LOCATED**

**AT NO. 176<sup>TH</sup> STREET AND HOLDREGE STREET.**

**CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:**

April 2, 2003

Members present: Steward, Carlson, Bills-Strand, Larson, Taylor, Duvall and Schwinn; Krieser and Newman absent.

Staff recommendation: Conditional approval.

There were no ex parte communications disclosed.

The Clerk announced that the applicant's representative has requested an additional two-week deferral to work with the neighbors.

Bills moved to defer two weeks, with continued public hearing and administrative action scheduled for April 16, 2003, seconded by Larson and carried 7-0: Steward, Carlson, Bills-Strand, Larson, Taylor, Duvall and Schwinn voting 'yes'; Krieser and Newman absent.

There was no public testimony.

**SPECIAL PERMIT NO. 1991**

**and**

**PRELIMINARY PLAT NO. 02020,**

**PINECREST,**

**ON PROPERTY GENERALLY LOCATED**

**AT NO. 14<sup>TH</sup> STREET AND MORTON STREET.**

**CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:**

April 2, 2003

Members present: Steward, Carlson, Bills-Strand, Larson, Taylor, Duvall and Schwinn; Krieser and Newman absent.

Staff recommendation: Conditional approval, as revised on March 25, 2003.

There were no ex parte communications disclosed.

Proponents

**1. Peter Katt** appeared on behalf of the property owner, Patrick Mooberry. After the Planning Commission public hearing, the developer met with the Department of Roads and city staff. As a result of that meeting, consensus was reached as to what is necessary to provide reasonable accommodations on the site for noise. Those accommodations are set forth in the revised staff recommendation dated March 25, 2003, and the applicant agrees with the revised conditions of approval.

There was no testimony in opposition.

Steward queried whether the proximity to the interstate is now being buffered by landscaping and screening. Ray Hill of Planning staff stated that it is being buffered by landscaping and setback. We are looking at this as though the garages (the front of the buildings) would somewhat act as a buffer to reduce the noise. The revised plan was reviewed and approved by Planning, Public Works, Health and Dept. of Roads. Steward then suggested that the proposed plat takes the back yards that originally abutted the right-of-way away from there. Hill explained that the road is shifted a little bit closer to the interstate but there are no homes on the north side of the interstate. Steward believes this is a commendable decision. He believes the economics as well as the envelopes are improved.

Larson inquired as to what is between the road and the interstate. Hill explained that to be where the landscaping and berms would be located to create the buffer. Larson would like to see the trees be as big as they can be when planted. Hill added that by moving the road to the north, it moved the lots out of the wetlands, preserving more wetlands. The plat actually gained eight dwelling units by changing from single family to townhouse units.

Public hearing was closed.

**SPECIAL PERMIT NO. 1991**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

April 2, 2003

Carlson moved to approve the revised staff recommendation of conditional approval dated March 25, 2003, seconded by Steward.

Schwinn commended the compromise.

Motion for conditional approval, as revised, carried 7-0: Steward, Carlson, Bills-Strand, Larson, Duvall, Taylor and Schwinn voting 'yes'; Krieser and Newman absent.

**PRELIMINARY PLAT NO. 02020**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

April 2, 2003

Carlson moved to approve the revised staff recommendation of conditional approval dated March 25, 2003, seconded by Steward and carried 7-0: Steward, Carlson, Bills-Strand, Larson, Duvall, Taylor and Schwinn voting 'yes'; Krieser and Newman absent.

There being no further business, the meeting was adjourned at 3:20 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on April 16, 2003.